

**Town of Horicon
Zoning Board of Appeals**

**August 22, 2017
Minutes**

Present at Meeting:

Cheryl Erickson, Chairperson
Gary Frenz
Pat Farrell
Scott Olson
James Dewar

Also Present: Town Attorney Leah Everhart, Frank Dinger, Nancy and Robert Konczeski, Joe and Susan Brand, Bob Olson, Janice Howard, Tom and Stephanie Layton, James Schillinger, Michael D’Angelico, J Wilson and James Steen

Agenda Items:	File # 2017-12 AV	Tax map 88.7-1-14
	File 2017-13 AV	Tax Map # 39.9-1-20.2
	File 2017-14 AV	Tax Map # 36.11-1-11
	File # 2017-10 AV	Tax Map # 39.9-1-22
	File # 2017-11 AV	Tax Map # 105.10-2-5

Pledge

Chairperson Cheryl Erickson called the meeting to order at 7:00 p.m.

Chairperson Cheryl Erickson appointed alternate #1, James Dewar to a regular voting member of the ZBA.

Review of Minutes: Scott Olson made a motion to **accept the July 25, 2017** minutes as written. Second by Gary Frenz. **ALL AYES.**

Zoning Administrator Jim Steen noted a change on the Agenda for the Dinger file # **2017-14 AV** that the garage will sit 2’ from the rear of the property not 20.5’; however it is correct on the application.

NEW BUSINESS:

File 2017-12 AV
Tax Map # 88.7-1-14
Joseph Brand
57 New Street
Brant Lake, NY 12815

Requesting an after the fact Area Variance for a shoreline setback, a roadway setback and side yard setback from **Zoning Code 6.10** for a screened porch and addition to sit 80.4’ from shoreline where 100’ is required, to sit 47.4’ from the roadway where 60’ is required and to sit 11.2’ from the side yard where 15’ is required.

Joe Brand spoke about his proposed variance. Joe stated he purchased the home a year ago from Marvin Kipp and the home is 50 years old. As soon as Joe Brand purchased the house he had it surveyed. Jim Hughes did the survey. Joe Brand stated he cleaned out 50 years’ worth of “stuff” from the shed buildings that were on the property. He now wants to replace the sheds with a screened porch off of the deck that is connected to the home.

Chairperson Cheryl Erickson asked where the previous buildings were located on the map and Zoning Administrator Jim Steen showed Chairperson Cheryl Erickson the larger map showing placements of previous sheds and new deck from screened porch to the house.

Town Attorney Leah Everhart asked Zoning Administrator Jim Steen if the current home is within the shoreline setback and was is pre-existing or needed a variance.

Zoning Administrator Jim Steen answered yes it is pre-existing.

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Scott Olson asked where the septic is located.

Joe Brand replied it is in the front of the house.

Scott Olson asked where the well is.

Joe Brand has a well house that he re-did and it pumps the water out of the lake.

James Dewar asked if the shed taken away was wood.

Joe Brand replied both sheds were wood. Two sheds and the bottom one was a trailer that was encased that he left there.

James Dewar asked what type of foundation the shed had.

Joe Brand replied it was a wood foundation.

Chairperson Cheryl Erickson asked if the house conforms to the shoreline setback and Zoning Administrator Jim Steen stated that it does not and is pre-existing. The measurement to the deck is 80.4' from the shoreline.

Zoning Administrator Jim Steen stated that variances are no longer required to change a non-conforming structure only a variance for the addition.

Chairperson Cheryl Erickson asked if there were any more questions.

Being no further questions or comments Pat Farrell made a motion to deem the application complete and set a Public Hearing for September 26, 2017. Second by Scott Olson. **ALL AYES.**

NEW BUSINESS:

File 2017-13 AV
Tax Map # 39.9-1-20.2
Ken and Arlene Miller
31 Maine Blvd.
Brant Lake, NY 12815

Requesting an Area Variance for a road setback, rear yard setback and a side yard setback from **Zoning Code 6.10** for an addition to sit 38' from centerline of road where 60' is required, 21' from the rear where 50' is required and to sit 8' from the side yard where 15' is required.

James Schillinger is the builder for the Millers and he spoke on behalf of the Millers proposed project. They want to add an addition to back of a small camp. They have a growing family and they will be adding a bedroom to the back and a staircase to the loft area. The space in the rear is an existing campground so it is a seasonal area. If the variance is granted the work done on the existing camp will be removing one bedroom and making it a dining room and moving the bedroom to the back. It is currently a three (3) bedroom space and will remain a three (3) bedroom space.

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Scott Olson asked if there is parking.

James Schillinger responded yes there is parking. The Millers have a lot across the street where they park.

Town Attorney Leah Everhart asked if it is the same tax map parcel.

Zoning Administrator Jim Steen stated it is a separate tax map parcel however it is considered one lot.

Town Attorney Leah Everhart stated it's in the deed. It is conveyed together in the same deeds; however, the county has separate tax map parcels.

Pat Farrell stated that the road, Maine Blvd., is shown as association property so how can the ZBA govern the setbacks.

Gary Frenz stated it has to be set up for emergency vehicles.

Town Attorney Leah Everhart stated she would defer to Jim Steen, Zoning Administrator for the current code but for setback purposes setbacks apply to both public and private roads.

Zoning Administrator Jim Steen stated that given there is no distinction in the code if the setbacks apply to private or public roads so it is subject to a road setback.

Chairperson Cheryl Erickson asked if there are any houses behind it.

James Schillinger responded there is a trailer park behind it with mobile homes set back very far. Much further from the property line.

Scott Olson asked if the second floor is a big loft and stated then it's more than one bedroom.

James Schillinger stated it will be three bedrooms totally.

Scott Olson stated it's a big loft and he wanted to know if there is a water system in and septic system in.

James Schillinger stated there is a drilled well and they are on an association septic system. So the system can accommodate the loft. The bedrooms remain three bedrooms and this proposed project is not growing any rooms. James Schillinger stated that the Miller's need to have a larger kitchen and storage for dietary needs of their daughter.

Zoning Administrator Jim Steen stated that the loft is not overly large and considered only one bedroom and the other two bedrooms are down stairs.

Town Attorney Leah Everhart asked if there are any aspects of the shared septic system on this property other than lines to remove waste from the property.

James Schillinger stated no just the line leaving their home to the shared septic system. Each individual camp has a line hooked up.

Scott Olson asked if there is any mechanism by which the number of bedrooms are monitored on the system.

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James Schillinger stated that this proposal is not increasing bedrooms therefore it fits within the parameters of the shared septic system. There are currently 15 homes on the shared system right now and it is a large system.

Zoning Administrator Jim Steen provided a map of the shared septic system on the proposed project and stated that last year one homeowner tore a house down and replaced it. At that time Zoning Administrator Jim Steen stated that he checked into the septic system and he did not see any outward signs of this system failing. It is to the Association's benefit to keep the system running properly.

Being no further questions or comments Scott Olson made a motion to deem the application complete and set a Public Hearing for September 26, 2017. Second by Pat Farrell. **ALL AYES.**

NEW BUSINESS:

**File 2017-14 AV
Tax Map # 36.11-1-11
Frank and Sandra Dinger
376 East Shore Drive
Adirondack, NY**

Requesting an AV for a rear yard setback for a proposed garage and a side yard setback for a relocated shed, from **Zoning Code 6.10** for a garage to sit 2' from the rear of the property where 22.5' is required and a relocated shed to sit 3' from the side yard where 15' is required.

Frank Dinger was present to speak about his proposed project. He is looking for a variance for a setback to put a garage behind the house. There is no other place to put it because the property is so narrow. He cannot put it in the front because his septic system is there. The garage would be for one car and some storage.

Chairperson Cheryl Erickson asked if there was anything behind him and Frank Dinger responded no.

Scott Olson asked where the well was located.

Frank Dinger pointed out on the map where the well is located. It is closer to where he wants to put the garage.

Scott Olson wanted to know why you can't move the garage closer to the house.

Frank Dinger responded that if he did that he would not be able to meet the 15' side yard setback.

Scot Olson asked if he is relocating the shed.

Zoning Administrator Jim Steen stated that the shed is now located two feet from property line.

Scott Olson asked how big the shed is.

Frank Dinger responded it is 8' x 10' it has a lean to on the side that will be taken off.

Town Attorney Leah Everhart asked if the shed on the map is located where it currently is or where you want it to be after completion.

Frank Dinger showed Town Attorney Leah Everhart where on the map he wants the shed located.

Town Attorney Leah Everhart stated it is further towards the back of the property and further towards the west.

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Frank Dinger responded yes more towards the west.

Chairperson Cheryl Erickson asked if there were any more questions.

Scott Olson asked if the neighbors Mr. and Mrs. Fitz have any issues.

Frank Dinger responded no problems and their property wraps around the Dinger property and the house is down further towards the road.

Being no further questions or comments Scott Olson made a motion to deem the application complete and set a Public Hearing for September 26, 2017. Second by Pat Farrell. **ALL AYES.**

PUBLIC HEARING: **File # 2017-10 AV**
 Tax Map # 39.9-1-22
 Robert and Nancy Konczeski
 13 Maine Blvd.
 Brant Lake, NY 12815

Requesting and after the fact Area Variance for a Roadway Setback from Zoning Code 6.10 for a 12.5' x 29' ground level platform with a 3' railing to sit 48' from the center line of the road where 60' is required.

Nancy Konczeski spoke about the proposed project. She stated that they previously received a variance for a modular home. When they applied for that variance they only had a small deck with stairs. After the house was built they decided to put a platform instead of the deck and it is unattached to the house. They had been given information that if it is unattached from the house they would not need a variance. They now have a new granddaughter and want railings and the platform became a deck. They are asking for 7' closer to the road than the house variance. She stated that the neighbors' homes on Main Blvd are 25' from the road (Polhemus home) and 31' from the road (Millers home). She showed pictures to the Board members of these neighbors' homes with measurements from the centerline of the road.

Chairperson Cheryl Erickson asked why they did not come before the Zoning Board for this project prior to building the deck as they had already been through the process when their home was built.

Nancy Konczeski stated that they had the understanding that because it was an unattached structure, a platform in front of house they were unaware that a variance was needed.

Zoning Administrator Jim Steen stated that there are no exemptions from getting a Zoning Compliance Certificate for structures attached or unattached. When he drove by he asked the contractors at the site if they had permits and they said no.

Chairperson Cheryl Erickson said then the contractors should have known.

Zoning Administrator Jim Steen stated that he asked Mr. Konczeski why he thought he did not need permits and Mr. Konczeski stated that he asked someone in Code Enforcement in Schenectady and Zoning Administrator Jim Steen was a little puzzled as to why Mr. Konczeski did not pick up the phone and call the Town of Horicon to find out if he needed a permit or variance.

Chairperson Cheryl Erickson stated that being they had been through the process already that it would have been logical to call the Town of Horicon to find out about permits. Taking someone's word that was not authorized to give an opinion on this area and spending a fair amount of money on the porch is going about it backwards.

Town Attorney Leah Everhart stated that we have a Public Hearing scheduled for tonight so we have to give others in the audience the opportunity to speak.

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Chairperson Cheryl Erickson asked if there are any other questions or comments on this application. No one responded.

Chairperson Cheryl Erickson started to introduce the objection letter from neighbor, Mr. Polhemus but before reading it she gave it to Mr. Konceski to read.

Zoning Administrator Jim Steen stated that there was a misstatement of facts in the letter regarding the setback from the garage. There was a subsequent change to the corner of the garage setback from ten (10) feet to nine (9) feet when the variance was approved.

Being no further questions or comments Gary Frenz made a motion to close the Public Hearing. Second by Scott Olson. **ALL AYES.**

Town Attorney Leah Everhart stated to the Board members that this is a Type II SEQRA action and is therefore exempt from SEQRA review.

Gary Frenz made a motion that this is a Type II SEQRA action and is exempt from SEQRA review. Second by Scott Olson. **ALL AYES.**

UNFINISHED BUSINESS: **File # 2017-10 AV**
 Tax Map # 39.9-1-22
 Robert and Nancy Konczeski
 13 Maine Blvd.
 Brant Lake, NY 12815

Requesting and after the fact Area Variance for a Roadway Setback from Zoning Code 6.10 for a 12.5' x 29' ground level platform with a 3' railing to sit 48' from the center line of the road where 60' is required.

Town Attorney Leah Everhart reminded the Board members that when after the fact variances are sought they should weigh the Balancing test the same whether the request is after the fact or not.

Pat Farrell stated that he drove by and this deck sits up on a plateau and he would want to put a fence around it with small children around.

Scott Olson stated that when granting the variance for the house it was the minimum for them to get by and he does not think it is proper to expand it now. It's a small lot with a fairly large house that does not meet the setbacks.

Town Attorney Leah Everhart stated that if the variance is granted she does not think there is a legal prohibition against an applicant coming back for another variance to expand.

Scott Olson stated just because they like to expand does not necessarily mean they should expand. At some point there has to be a limit. There has to be a definitive reason to grant variances. "I want to" is not definitive enough of a reason.

Chairperson Cheryl Erickson asked fellow Board members if they can achieve putting the chairs out by any other means feasible to the applicant in order to meet their goal. Given the terrain bringing it back four (4') feet will not make any useable land in front so they might as well use that space as a deck.

Town Attorney Leah Everhart asked the Board members if they would like to reconsider the Balancing test as most were in favor of the applicant. The Board has not identified any issues in favor of denial.

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Scott Olson asked his fellow Board members if they approve this variance would they like to limit the size of the deck. Four of the other Board members responded no they would not like to limit the size of the requested deck. It would not be usable. They decided not to ask the applicant to reduce the size of the requested deck.

The Board reviewed the Area Variance criteria:

Chairperson Cheryl Erickson stated that the Board would now go ahead and discuss the Balancing Test to balance the benefit to the applicant with detriment to the health, safety and welfare of the community.

After very lengthy discussions the ZBA further finds:

- 1) After a very lengthy discussion the Board decided that this was the only means feasible to achieve the applicant's goal. Making the deck any less than the requested twelve (12') in width would not allow for chairs to be placed on the deck. It could not be placed on the back of the house due to the hilly terrain.
- 2) There will be no undesirable change to the character of the neighborhood or any detriment to nearby properties because it is done tastefully and the deck on the house looks appropriate. This is consistent with the neighborhood that consists of small lots that are built out.
- 3) The requested variance seems to be substantial because of the size of the house on the lot is pretty big and with the deck it seems substantial; however the requested size of the variance for the deck is only about 20%. So it is not substantial.
- 4) There are no adverse physical or environmental effects because there were no trees removed and the storm water runoff is small and minimal.
- 5) The alleged difficulty was self-created because it is a big house on a little lot that created the problem.
- 6) After much discussion by the Board members regarding minimum variance necessary they feel that given the terrain and bringing it back four (4') feet will not create useful land so might as well use it as a deck. The topography of the land caused the house to be moved forward requiring the need for the original setback variance. The twelve (12') feet width of this deck is the issue. Some Board members think it is not the minimum necessary and can be made less square footage; however, due to the topography there is no other way to reduce the square footage of the deck and by restricting square footage of the deck it would not achieve the benefit for the applicant. This does not exceed the maximum lot coverage. The Board decided that this is the minimum variance necessary because it allows the goal of the applicants to be met.

Being no further questions or comments and based on the previous discussions, Scott Olson made a motion to approve the requested variance for the after the fact Area Variance for a Roadway Setback from **Zoning Code 6.10** for a 12.5' x 29' ground level platform with a 3' railing to sit 48' from the center line of the road where 60' is required. Second by Pat Farrell. **ALL AYES.**

PUBLIC HEARING:

**File 2017-11 AV
Tax Map 105.10-2-5
Michael and Donna D'Angelico
23 Hayesburg Road
Brant Lake, NY 12815**

Requesting an after the fact Area Variance for a Rear Yard Setback from **Zoning Code Section 6.10** and Section 8.01 B to enclose the back and side of a 22' x 12' carport/lean-to on a detached garage to sit 11.5' from the rear where 22.5' is required.

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Chairperson Cheryl Erickson opened the Public Hearing and asked if there was anyone present that would like to speak on the proposed project.

Michael D' Angelico spoke on behalf of his requested project. He has lived at the property for twenty-nine years and he put a lean-to off of the side of his garage. His neighbor was going to sell him a piece of property behind him that is just woods and swamp; however due to other circumstances he did not purchase that piece of property. The current owner is discussing with him about selling a piece of the property. The lean-to is built on blocks and sand and the size is 22'x 12' feet. It is lagged to the right side of the garage in the proper way. Mr. D'Angelico stated that it's on blocks with two 4'x 4' posts attached to the garage and there is only dirt underneath. He has not closed it in yet.

Chairperson Cheryl Erickson asked if there was anyone else there that wishes to speak on the project.

Being no further questions or comments Scott Olson made a motion to close the Public Hearing. Second by Pat Farrell. **ALL AYES.**

UNFINISHED BUSINESS: **File 2017-11 AV**
 Tax Map 105.10-2-5
 Michael and Donna D'Angelico
 23 Hayesburg Road
 Brant Lake, NY 12815

Requesting an after the fact Area Variance for a Rear Yard Setback from **Zoning Code Section 6.10** and Section 8.01 B to enclose the back and side of a 22' x 12' carport/lean-to on a detached garage to sit 11.5' from the rear where 22.5' is required.

Chairperson Cheryl Erickson stated that the Board would now go ahead and discuss the Balancing Test to balance the benefit to the applicant with detriment to the health, safety and welfare of the community.

Scott Olson asked if the lean-to could have been built on the other side of the garage.

Michael D'Angelico responded that no he could not put it there because there is a window in the garage at that location as well as a tent that would not accommodate the lean-to.

Scott Olson asked the applicant again whether it was feasible to place the lean-to anywhere else on the property.

Mr. D'Angelico stated that the 24' x 24' garage was built five years ago and the lean-to is attached to it. He constructed the lean-to six months ago in anticipation of getting more property.

A lengthy discussion ensued with the Board members regarding whether the benefit can be achieved by other means feasible to the applicant. Four Board members do not think it could have been placed anywhere else on the property. One member thinks it can be placed on different portion of the property. Therefore, the benefit cannot be achieved by other means feasible to the applicant.

This project does not create an undesirable change to the neighborhood. It is in keeping with the character of the neighborhood.

The Board members stated that even though it is a small structure, the percentage of the variance is substantial. Because the land behind it has no house on it and is the edge of the woods to go within the 11' of the property line where there is woods and swamp it is not substantial. Three Board members agreed it is not substantial and two Board members think it is substantial. So they decided it is not substantial.

This proposed project will not have any adverse physical or environment effect on the area.

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The Board members agreed that the alleged difficulty was self-created.

The Board members discussed whether this is the minimum variance necessary.

Scott Olson does not understand what the applicant is trying to achieve.

Gary Frenz stated the need for more storage.

Scot Olson stated they are being asked to bend the rules of the town so there has to be a reason to do it other than "I want to".

Michael D'Angelico stated he built it in order to keep the lawnmower, lawn tractors, boat trailers and trailers for lawnmower. He stated that he has no room in the garage because that is where he keeps his cars and needed more storage and rather than having equipment all over the property under tents he thinks this is a better way to store his equipment.

Chairperson Cheryl Erickson stated that he has more vehicles than he can store in the garage so he needs to have more storage and she thinks this makes sense to have storage.

The Board reviewed the Area Variance criteria:

After very lengthy discussions the ZBA further finds:

- 1) Four Board members do not think this project could have been placed anywhere else more feasible. One member thinks it can be placed on a different portion of the property. Therefore, the benefit cannot be achieved by other means feasible to the applicant.
- 2) This does not create an undesirable change to the neighborhood and it is in keeping with the character of the neighborhood.
- 3) The Board members stated that even though it is a small structure, the percentage of the variance is substantial. Because the land behind it has no house on it and is the edge of the woods to go within the 11' of the property line where there is woods and swamp it is not substantial. Three Board members agreed it is not substantial and two Board members think it is substantial. So they decided it is not substantial.
- 4) This proposed project will not have any adverse physical or environment effect on the area.
- 5) The Board members agreed that the alleged difficulty was self-created.
- 6) After much discussion by the Board members regarding minimum variance necessary they determined that it is the minimum necessary to achieve the applicant's goals.

Gary Frenz stated that this is a Type II SEQRA action requiring no further SEQRA review. Second by Scott Olson. **ALL AYES.**

Being no further comments or questions James Dewar made a motion to approve the requested variance. Second by Pat Farrell. Scott Olson opposed. Chairperson Cheryl Erickson, Gary Frenz, Pat Farrell and James Dewar all approved. Motion carried to approve. **4 AYES. 1 NO**

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Communications: None

Public Comments: None

Board Comments: The Board members had a lengthy discussion regarding after the fact variances.
Town Board member Bob Olson spoke about septic variances as well.
The fee schedule was also discussed.

Being no further comments or questions Scott Olson made a motion to adjourn. Second by Pat Farrell. **ALL AYES.**

Adjourn: 8:55 PM

Next Meeting Date: September 26, 2017

Respectfully Submitted,
Terri Katsch, Secretary